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SIPDIS

SENSITIVE

FAA FOR ANNA SABELLA EAIR/API/AWH

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SUBJECT: TACA AIRLINES FINDS HOME FIELD ADVANTAGE IN THE SUPREME COURT OF EL SALVADOR

¶11. (U) Sensitive but Unclassified. Not for Internet Distribution.

¶12. (U) Summary: The Supreme Court of El Salvador has ruled that the Civil Aviation Authority (AAC) of El Salvador violated the constitutional rights of TACA International Airlines S.A. (TACA) in allowing Compania Panamena de Aviacion, S.A. (COPA) of Panama a second daily flight to El Salvador and revoked permission for the second flight. The ruling stranded hundreds of passengers at the height of the holiday season. The ruling came only three days after TACA filed suit, an extremely short time for the Supreme Court, and cast a shadow over the ability of AAC to act as an independent regulatory body. End Summary.

¶13. (U) In November 2004, Compania Panamena de Aviacion, S.A. (COPA) of Panama applied to the Salvadoran Civil Aviation Authority (AAC) for permission to add a second daily flight to El Salvador from Panama. This second flight would be direct, their current flight operating via Managua. The AAC granted permission for the second flight pending a public hearing, a requirement under Salvadoran civil aviation law. As required, COPA submitted a notice for the hearing in the Official Journal, as well as in La Prensa Grafica, one of the two largest newspapers in El Salvador. The Official Journal prints entries several days after receipt, and so the entry was not published until the day of the hearing. The advertisement of the hearing in La Prensa Grafica was published on Saturday, the 11th of December 2004, with the hearing scheduled for December 15th 2004. TACA did not appear at the public hearing to oppose the decision, and AAC granted permission to COPA to fly the second route to begin after the 1st of December 2005.

¶14. (U) On June 1, 2005, TACA submitted a complaint to the AAC board of directors, saying COPA was using non competitive practices on the route. The AAC board rejected the complaint on November 1st, saying they could not determine if there were non competitive practices when COPA had not yet started flying the second route. On December 6th TACA submitted a complaint to the Executive Director of the AAC, Renzo Zaghini, charging irregularities in the public hearing process. They claimed the Official Journal was published the same day of the hearing, and the La Prensa Grafica announcement was on a Saturday, not a workday. On December 13 Zaghini informed TACA he had no legal authority to deny the new route based on TACA's allegations. On December 6 TACA also submitted a complaint to the AAC Board of Directors, saying they had not received the AAC's report on the result of an inspection of COPA's operations. This request was denied on December 20th, as there is no law stating that the AAC must make public this information.

¶15. (U) On December 12, 2005, TACA took a different route, and submitted a request for protection ("amparo") with the constitutional chamber of the Supreme Court of El Salvador. In an unusually fast decision for the Supreme Court, on December 15 it ruled that the decision by AAC to grant the permission for the flight may have been handled in an unconstitutional manner, and repealed the authorization for the flight by the AAC pending a final decision. The ruling was issued only hours before the first flight was to depart Panama for El Salvador, but effectively canceled the second flight, stranding many passengers wishing to travel from Panama to El Salvador and vice versa. Eduardo Aguilar, General Manager of COPA in El Salvador, told econoff that almost 500 people were affected in the days leading up to the Christmas holidays.

¶16. (SBU) On December 16, the AAC asked the Supreme Court to allow the COPA service to continue pending the Court's final decision, on the grounds that the suspension of service was having a detrimental affect on the public, particularly during the runup to the holidays. The Supreme Court to date has not answered the request. In the words of Renzo Zaghini, the answer could come in 'One day or 25 years'. Zaghini was upset by the Court decision on TACA's amparo request, which he saw as interference in a regulatory matter. In addition, on January 12 AAC will have to renew COPA's operational permit and must decide if it should be renewed for one or two daily flights, possibly without having received a final

decision by the Supreme Court.

17. (SBU) Comment. COPA is a Panamanian company but is 49 percent owned by Continental Airlines. Continental has not specifically asked for advocacy on this issue, but Embassy El Salvador is interested in the ramifications of the case on both civil aviation and the general investment climate. The decision of the Supreme Court to suspend the authorization for the flight appears to be an end run around the authority of the AAC. The AAC and Zaghini in particular have a very good reputation within the aviation industry in El Salvador, and, we believe, with the Department of Transportation in the United States. COPA's Eduardo Aguilar characterized AAC as very impartial, going as far as returning a large number of 'fly for free' cards offered by TACA that would have allowed AAC employees to fly anywhere TACA flies. Zaghini said the AAC has earned a reputation for resisting political pressure from the public sector, and by going to the Supreme Court, TACA has created a 'ridiculous' situation. The government of El Salvador has promoted the country as good for investment, and surveys have indeed borne out this claim. However, TACA is one of the most well known corporate entities in El Salvador, and one that has good connections at all levels of government. There is no direct evidence of TACA using their influence in this case, but their appeal to the Supreme Court and the speed of the response is an avenue that few companies in El Salvador would be able to use so effectively.

Barclay